



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 691**

**IN THE MATTER
OF
SUZANNE TRAINI**

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Suzanne Traini pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On June 25, 2002, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Traini. The Commission has concluded its inquiry and, on November 26, 2002, found reasonable cause to believe that Traini violated G.L. c. 268A, § 19.

The Commission and Traini now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Traini is a Southborough Board of Health member.
2. On or about September 18, 2000, Traini signed offers to purchase property at 26 Lynbrook Road (the "Property") and surrounding land for a total of \$575,000. Her offers were contingent on zoning, septic and conservation commission approvals, and were secured with a \$500 deposit.
3. At its October 10, 2000 meeting, the Board of Health approved and signed septic permits for two lots on the Property. At that meeting, Traini verbally disclosed her financial interest in these permits and recused herself from the board's actions on the permits.
4. Sometime prior to January 23, 2001, both the Massachusetts Water Resources Authority and the Massachusetts District Commission, at the urging of an abutter, contacted Southborough's Public Health Director to discuss concerns as to whether the Property's setback from a nearby waterway was sufficient. The agencies' position at that time was that the setback from the waterway should be 400 feet. The Southborough Board of Health's longstanding position was that the setback need only be 200 feet. The Property's setback was more than the 200 feet required by the Board of Health, but less than the 400 feet that the state agencies believed was appropriate.
5. At the January 23, 2001 Board of Health meeting, the Public Health Director, based on the calls he had received from the MWRA and the MDC, said that the Board of Health should

rescind the Property's permits and instead hold a public hearing with an eye toward granting a variance for the Property.

6. At that January 23, 2001 meeting, although advised to abstain by a fellow board member, Traini recommended that the board to adhere to its longstanding position that the setback only needed to be 200 feet. Traini also stated that the board could not under Title V rescind a septic permit once a construction permit had been issued.

7. The Board of Health took no action on the Property at its January 23, 2001 meeting. The permits remained in effect.

8. In March 2001, Traini executed a purchase and sale agreement for the Property at a reduced price of \$507,500, secured with a \$25,000 deposit.

9. Traini's purchase of the Property fell through after the Board of Health at its March 27, 2001 meeting suspended its septic permits for the Property. (The suspension was unrelated to the setback issue discussed at the January 23, 2001 meeting.) Traini forfeited \$5,000 of her deposit.

10. Traini cooperated with the Commission's investigation of this matter.

Conclusions of Law

11. Except as otherwise permitted in that section, § 19 prohibits a municipal employee from participating as such in a particular matter in which she has a financial interest. None of the exemptions apply.

12. As a Board of Health member, Traini is a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

13. The Board of Health's decision to maintain its policy of setback distances from the Sudbury River Aqueduct, and not to consider rescinding the Property's permits, was a particular matter.

14. Because Traini had outstanding a written offer to purchase the Property, which was contingent on obtaining all necessary town permits, she, to her knowledge, had a financial interest in this particular matter.

15. At the January 23, 2001 meeting of the Board of Health, by discussing the propriety of the Board changing its policy and considering rescinding the Property's permits, Traini participated in her capacity as a Board of Health member, thereby violating § 19.¹

Resolution

In view of the foregoing violation of G.L. c. 268A by Traini, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Traini:

(1) that Traini pay to the Commission the sum of \$1,500.00 as a civil penalty for violating G.L. c. 268A, § 19; and

(2) that she waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: November 12, 2003

¹ According to Traini, her intention was to point out that the board's rescission of the permits would be improper under Title V. While one's intentions may be a mitigating factor, the application of § 19 is triggered by any participation in a particular matter in which a municipal employee has a financial interest, regardless of motivation or intention. In this case, moreover, had the board decided to change its setback policy and consider rescinding the Property's permits – and it is impossible to say what they would have done had Traini recused herself – such a step would have at the very least delayed her acquisition of the property, always a matter of critical importance in real estate transactions.